

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY M. TARDIF,

Plaintiffs,

-against-

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT ("NYPD"), INSPECTOR JOHN O'CONNELL,
DEPUTY INSPECTOR EDWARD WINSKI, POLICE
OFFICER JAMES MCNAMARA, POLICE OFFICER ALENA
AMINOVA, POLICE OFFICER KENDAL CREER, POLICE
OFFICER MARSHA RUMBLE, POLICE OFFICER FELIX
SCHMIDT, DEPUTY INSPECTOR DANIEL MULLIGAN,
SERGEANT THOMAS MCMANUS, AND JOHN DOE NYPD
OFFICERS ##1-9

Defendants.
-----X

**DECLARATION OF JOY T.
ANAKHU IN SUPPORT OF
DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

13 Civ. 4056 (KMW)(FM)

JOY T. ANAKHU, declares under penalty of perjury and pursuant to 28 U.S.C. § 1746,
that the following is true and correct:

1. I am a Senior Counsel in the Office of Zachary W. Carter, Corporation Counsel of the
City of New York, attorney for defendants. As such, I am familiar with the facts stated below. I
submit this declaration in support of defendants' motion for summary judgment pursuant to Rule
56 of the Federal Rules of Civil Procedure.

2. Attached as Exhibit A, labeled "P11-P13," is plaintiff's notice of claim in this action. In
the notice of claim, plaintiff identifies only the City of New York, Inspector Edward Winski, and
Sergeant Kendal Creer. The description produced in the notice of claim does not describe or
reference any other defendants and lists three dates of incident as March 17, 2012; March 21,
2012 and March 22, 2012.

3. Attached as Exhibit B is plaintiff's Third Amended Complaint ("TAC"). In this Amended Complaint plaintiff alleges nine causes of action including False Arrest, Excessive Force and First Amendment Retaliation. Many claims stem from plaintiff's interactions with unidentified officers, John Does 1-5, 8, 9. Plaintiff asserts she experienced multiple seizures while in police custody, and that police custody exacerbated her Post Traumatic Stress Disorder. TAC, ¶¶133-135, 197. Lastly, in the Complaint plaintiff makes no substantive allegations against Inspector Edward Winski or Deputy Chief John McNamara.

4. Attached as Exhibit C is plaintiff's Second Amended Complaint ("SAC"). In the Amended Complaint plaintiff alleges, *inter alia*, that her interaction with officers dramatically increased her seizures. SAC ¶¶130-139. Plaintiff also includes nine causes of actions.

5. Attached as Exhibit D is plaintiff's First Deposition, conducted on November 26, 2014. During the deposition plaintiff identified the individual John Doe defendants as white males wearing blue uniforms. As it relates to March 17, 2012, plaintiff asserts that the individual who threw her to the ground and kicked her while she was being arrested was a white male. Plaintiff also concedes that she pled guilty to the charges stemming from her arrest on March 17, 2012. Further, plaintiff testified that on April 16, 2012 residents were complaining about the noise volume coming from her and other protestors.

6. Attached as Exhibit E is plaintiff's 50-H hearing, conducted on December 6, 2012.

7. Attached as Exhibit F is a copy of a report by Dr. Steven A. Fayer, M.D. Dr. Fayer's areas of special interest include psychiatric disorders. At the request of defendants, on January 30, 2015, Dr. Fayer conducted a comprehensive psychiatric examination on Plaintiff. The report includes his findings and opinions. This document is filed under seal.

8. Attached as Exhibit G is plaintiff's ruling from the administrative hearing, D1247. This document is filed under seal.

9. Attached as Exhibit H is a portion of plaintiff's "StreetWork Project-Progress Note" for January 12, 2012 and January 16, 2012, P3464, P3465. This document is filed under seal.

10. Attached as Exhibit I is plaintiff's evaluation from Safe Horizon, seen on February 10, 2012 and March 9, 2012, D1358-1360; P3438-3439. This document is filed under seal.

11. Attached as Exhibit J is a copy of plaintiff's second deposition conducted on October 15, 2015. This document is filed under seal.

12. Attached as Exhibit K is the deposition of plaintiff's friend Lauren DiGioia. Ms. DiGioia attended an Occupy Wall Street demonstration with plaintiff on March 17, 2012 and April 16, 2012. Ms. DiGioia acknowledged that residents near Federal Hall were complaining that their children could not sleep due to the noise from protestors on April 16, 2012.

13. Attached as Exhibit L is the deposition of plaintiff's friend James Amico. Mr. Amico recalls seeing plaintiff at subsequent demonstrations around the City of New York after the incidents outlined in the complaint.

14. Attached as Exhibit M is plaintiff's social media related posts regarding her 40 mile bike tour, wedding events and trip to Brazil. SM00002; SM000245; SM04419.

15. Attached as Exhibit N is the deposition of Inspector Edward Winski. On March 17, 2012. Inspector Winski gave numerous orders for plaintiff and other protestors to clear the sidewalk. Inspector Winski did not order plaintiff's arrest or have any physical contact with plaintiff.

16. Attached as Exhibit O is plaintiff's video labeled "P3138". This video depicts part of the events leading up to plaintiff's arrest on March 17, 2012 including Inspector Winski giving

numerous orders on a bullhorn. Plaintiff can be seen in a light blue t-shirt with a pink/purple scarf around her neck.

17. Attached as Exhibit P is video labeled “Defendants’ Video #8”, 20120317141322. This video depicts plaintiff and events leading up to plaintiff’s arrest on March 17, 2012.

18. Attached as Exhibit Q is the deposition of Officer Victor Lara. Officer Lara was plaintiff’s arresting officer on March 17, 2012 and was the officer that took plaintiff to Bellevue hospital to be cleared for arraignment.

19. Attached as Exhibit R is an image provided by plaintiff labeled “P8”. The image depicts African-American Officer Kendal Creer and Asian-American Officers Fee Ko and Chang Pak on March 17, 2012

20. Attached as S is video labeled “Defendants’ Video #9”. This video depicts plaintiff on March 17, 2012 being assisted in a police van after her arrest by Officer Kendal Creer.

21. Attached as Exhibit T is the deposition of Jessica Rechtschaffer. Ms. Rechtschaffer was present in the patrol wagon along with plaintiff on March 17, 2012.

22. Attached as Exhibit U, is plaintiff’s picture with her arresting Officer Victor Lara. In the picture plaintiff can be seen smiling while she is photographed and in no apparent distress. D221, D222.

23. Attached as Exhibit V is a portion of Officer Lara’s memobook related to March 17, 2012. In the book plaintiff signed to relinquish all of her belongings to her friend Elizabeth Holmes rather than have it remain in NYPD custody during her arrest. D295, 299, 300, 301.

24. Attached as Exhibit W is a copy of plaintiff’s NYPD medical treatment form for March 17, 2012, D6. This document is filed under seal.

25. Attached as Exhibit X is a copy of plaintiff's medical records on March 18, 2012 from Bellevue Hospital. D88-97. This document is filed under seal.

26. Attached as Exhibit Y is a portion of the 20th Precinct Command log for March 17, 2012. The 20th Precinct is also known as the "Medical Precinct" where arrestees with medical needs such as plaintiff are taken. Plaintiff was first brought to this precinct on March 18, 2012 at approximately 5:00am, D367.

27. Attached as Exhibit Z is a portion of the 20th Precinct's Roll Call Sheet. This lists the two female NYPD employees assigned as cell attendants during plaintiff's time in custody at the 20th precinct. D389, 403.

28. Attached as Exhibit AA is an affidavit of Officer Crystallee Otero along with Patrol Guide section 202-40. Officer Otero was plaintiff's cell attendant on March 18, 2012 and was present when plaintiff suffered a seizure. Officer Otero outlines the duties of a cell attendant and the circumstances that unfolded on March 18, 2012.

29. Attached as Exhibit BB is a copy of the ambulance call Report related to March 18, 2012. D99. This document is filed under seal.

30. Attached as Exhibit CC is a copy of plaintiff's Criminal Court Transcript dated November 26, 2012, D268-274. Plaintiff pleads guilty to her arrest on March 17, 2012 and the District Attorney's Office moved to dismiss plaintiff's charges related to her arrest on April 16, 2012 in the "interest of justice". Plaintiff's charges for March 17, 2012 and April 16, 2012 were consolidated with plaintiff's four additional criminal cases.

31. Attached as Exhibit DD is a copy of Sergeant Kendal Creer's deposition transcript.

32. Attached as Exhibit EE is a copy of Officer John Baiera's deposition transcript.

33. Attached as Exhibit FF is a copy of Officer Fee Ko's deposition transcript.

34. Attached as Exhibit GG is a copy of Officer Paul Linder's deposition transcript.

35. Attached as Exhibit HH is a copy of Officer Lazar Simunovic's deposition transcript.

36. Attached as Exhibit II is a video labeled "Defendants' Video #12". This video was taken in the early morning of March 21, 2012 and depicts plaintiff and other protestors during an Occupy Wall Street demonstration in Union Square Park. A police officer can be heard giving repeated dispersal orders from the park using a megaphone. Plaintiff can be seen screaming "bullshit" and "pigs go home" at officers. Plaintiff can also be seen offering doughnuts to officers while screaming "it's a peace offering". This video also depicts plaintiff shaking police barricades and successfully pushing one of the barricades over.

37. Attached as Exhibit JJ is a copy of Officer Brett Meritz-Saccente's deposition transcript.

38. Attached as Exhibit KK is a copy of Inspector Michael Pilecki's deposition transcript.

39. Attached as Exhibit LL is a copy of Sergeant Giovanni Mattera's deposition transcript.

40. Attached as Exhibit MM is Sergeant Thomas McManus's deposition transcript.

41. Attached as Exhibit NN is a copy of New York City Council Member, Margaret S. Chin's letter, dated April 24, 2012, to then Mayor Michael Bloomberg. In the letter Council Member Chin expressed concerns from her constituents residing in the Federal Hall area. Many residents in the area complain about the overwhelming presence of Occupy Wall Street protestors, the unreasonable noise associated with the demonstrations and the greatly decreased quality of life. D850.

42. Attached as Exhibit OO are numerous 311 calls from residents in the Federal Hall area on April 16, 2012. The 311 complaints are about loud noises coming from protestors and the cause of several disturbances. D854-864.

43. Attached as Exhibit PP is a copy of Officer Colleen Henry's Charging Document related to plaintiff's morning arrest on April 16, 2012.

44. Attached as Exhibit QQ is a copy of Deputy Chief James McNamara's deposition.

45. Attached as Exhibit RR is a copy of Officer Alena Aminova's deposition.

46. Attached as Exhibit SS is a copy of Lieutenant Sharon DeStefano's deposition. Lt. De Stefano was one of the officers that apprehended plaintiff on April 16, 2012 after she attempted to flee the scene of her arrest.

47. Attached as Exhibit TT is a copy of Deputy Chief John O'Connell's deposition. D.C. O'Connell made the decision to place plaintiff under arrest on April 16, 2012 after plaintiff continued to yell and approached him in response to orders to lower the volume/quiet down.

48. Attached as Exhibit UU is a video labeled "Defendants' Video #1". This video was taken on April 16, 2012 and depicts the events on April 16, 2012 leading up to plaintiff's arrest. The video depicts, *inter alia*, the arrest of a man who is screaming. Officer Rumble can be seen arresting this individual in front of Federal Hall.

49. Attached as Exhibit VV is a video labeled "Defendants' Video #5". This video was taken on April 16, 2012 and depicts the events on April 16, 2012 including plaintiff's arrest. In the video you can see plaintiff running away from Lt. DeStefano and another supervisory officer before she is apprehended.

50. Attached as Exhibit WW is a copy of Officer Marsha Rumble's deposition. Officer Rumble was not involved in arresting or apprehending plaintiff on April 16, 2012.

51. Attached as XX is a video labeled "Defendants' Video #10", (BrianTelevision). This video was taken on April 16, 2012 and depicts the events on April 16, 2012 including plaintiff's

arrest. Plaintiff is seen running away from the scene of her arrest before being apprehended by Lt. DeStefano.

52. Attached as Exhibit YY is a copy of plaintiff's Arrest Report for the night of April 16, 2012. This document is placed under seal.

53. Attached as Exhibit ZZ is a copy of Officer Felix Schmidt's deposition.

54. Attached as Exhibit AAA is a copy of the Sprint EMS Report for April 16, 2012. The Report shows that several calls were made by officers to obtain an ambulance for plaintiff. D33.

55. Attached as Exhibit BBB is a copy of plaintiff's medical records for Bellevue Hospital on April 16, 2012. P140-144. This document is filed under seal.

56. Attached as Exhibit CCC is the 20th Precinct Female Special's Prisoner Roster for April 17, 2012. This roster shows that plaintiff was sent to the "Medical Precinct" and was checked on every thirty minutes by a cell attendant while in custody. D37-40.

57. Attached as Exhibit DDD is a copy of the Honorable Judge Lynn Kotler decision on August 20, 2012 denying plaintiff's motion to dismiss the charges stemming from her arrest on April 16, 2012. In the decision the Criminal Court decision, the court noted that there was reasonable cause to believe that plaintiff made unreasonable noise and that the orders to quiet down/lower the volume by police was not arbitrary. The Court also noted that plaintiff's arrest was premised on probable cause.

58. Attached as Exhibit EEE is a copy of plaintiff's arrest history. D42. This document is filed under seal.

59. Attached as Exhibit FFF is the transcript of Deputy Inspector Mulligan. He testified to briefly having contact with plaintiff on March 17, 2012 after orders to disperse were issued, and that he then handed plaintiff off to an officer to process her arrest, as depicted on video.

Dated: New York, New York
June 1, 2016

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